

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TIMOTHY MCCOOL,

Plaintiff,

-against-

BJ'S WHOLESALE CLUB, INC.,

Defendant.

**STIPULATION OF
SETTLEMENT AND
ORDER OF
DISMISSAL**
3:09-cv-0127 (TJM/DEP)

WHEREAS, plaintiff, Timothy McCool, through his counsel, James M. Hartmann, filed a complaint on November 4, 2009 alleging personal injuries as a result of a fall at the BJ's Wholesale Club, Oneonta, New York on September 27, 2007; and

WHEREAS, the parties are interested in resolving the issues alleged in the complaint in this action, and have negotiated in good faith for that purpose; and

WHEREAS, none of the parties to the above-captioned action is an infant or incompetent person; and


WHEREAS, the parties in the above-captioned action wish to discontinue the litigation;

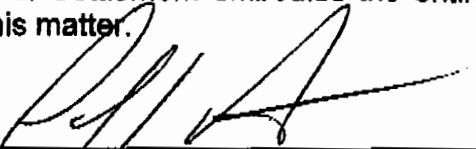
IT IS HEREBY STIPULATED AND AGREED by and between the parties and/or their respective counsel as follows:

1. The parties hereby agree that the above-captioned action is dismissed and discontinued with prejudice, as to the named defendant, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.
2. Any and all of the claims for damages by plaintiff which are the subject to his action or otherwise arise out of any of the incidents

alleged in the Complaint are hereby settled, as against the named defendant, for the sum of \$50,000 in full satisfaction of all claims for damages, costs, disbursements and legal fees.

3. The check for payment of the sum stated in Paragraph #2, above, has been drawn to the order of the plaintiff and his attorney and has been mailed to the office of James M. Hartmann.
4. In consideration of the payment of the sum stated in Paragraph #2, above, the plaintiff hereby releases the named defendant in its individual and official capacities, and its heirs, executors, administrators and assigns, from any and all claims, liabilities and causes of action related to or arising out of any and all of the events set forth in the Complaint in the above-captioned action.
5. Nothing in this So Ordered Stipulation of Settlement shall be construed as an admission or concession of liability whatsoever by any of the defendants regarding any of the allegations made by the plaintiff in the Complaint.
6. This Stipulation of Settlement and any Order entered thereon shall have no precedential value or effect whatsoever and shall not be admissible in any other action or proceeding as evidence or for any other purpose except in an action or proceeding to enforce this Stipulation of Settlement.
7. This So Ordered Stipulation of Settlement embodies the entire agreement of the parties in this matter.


JAMES M. HARTMANN, ESQ.
(Bar Roll No.: 510174)
Attorney for Plaintiff Timothy McCool
Office & Postal Address:
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P.O. Box 206
Delhi, New York 13753



PAUL J. CAMPITO
(Bar Roll No.: 103947)
FLINK SMITH LLC
Attorneys for Defendant BJ's
Wholesale Club, Inc.
Office & Postal Address:
449 New Karner Road
Albany, New York 12205
(518) 786-1800

SO ORDERED:

Dated: _____, New York

March _____, 2011

IT IS SO ORDERED:


David E. Peebles
U.S. Magistrate Judge

Dated: March 30, 2011